

## **Crime and Courts Bill**

### **Delegated Powers – Supplementary Memorandum by the Ministry of Justice**

1. Lord Phillips of Worth Matravers has tabled an amendment (number 112 on the Marshalled List) to the Bill (inserting new clause ‘*Supreme Court security officers*’) for Lords Report stage. The amendment includes a new delegated power. The Government intends to support the amendment. In addition, the Government has tabled an amendment to the Bill which amends clause 18 and inserts a new Part 4A (exercise of functions of a Head of Division) into Schedule 12 to the Bill. This new Part includes a new delegated power. This supplementary memorandum explains why these delegated powers are considered appropriate and the reason for the procedure selected.

#### **New clause ‘*Supreme Court security officers*’ – new section 51D(1) of the Constitutional Reform Act 2005 - Power to make regulations about retention of knives and other articles**

*Power conferred on:* Lord Chancellor

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Negative resolution

2. New clause ‘*Supreme Court security officers*’ inserts new sections 51A to 51E of the Constitutional Reform Act 2005 (“the 2005 Act”) which permit the President or the Chief Executive of the Supreme Court of the United Kingdom (“UKSC”) to appoint security officers to the UKSC who will have the same powers as court security officers appointed by the Lord Chancellor under Part 4 of the Courts Act 2003. The powers of the Lord Chancellor under Part 4 do not currently extend to UKSC security officers.

3. New section 51D(1) of the 2005 Act empowers the Lord Chancellor to make regulations about the procedure to be followed when an item has been seized or surrendered to a UKSC security officer. New section 51D(3) also provides that the Lord Chancellor must make regulations setting out the procedure to be followed when a knife is seized by or surrendered to a UKSC security officer.

4. It would be cumbersome to set out in primary legislation all the steps to follow before an item seized by or surrendered to a UKSC security officer can be returned and this would not provide the Lord Chancellor with sufficient flexibility to amend the process.

5. The Lord Chancellor has an identical regulation making power in respect of courts in the HMCTS estate by virtue of sections 55A(5) and 56 of the Courts Act 2003. The new powers will be included in Part 3 of the Constitutional Reform Act 2005 rather than in the Courts Act 2003 as the

powers in the Courts Act 2003 only exist in England and Wales whereas the proposed amendment will apply to the UK in light of the jurisdiction of the UKSC.

6. As is the case for regulations under section 55A(5) or 56 of the Courts Act 2003, regulations under the new clause will be subject to the negative resolution procedure. This is provided for by section 144(6) of the Constitutional Reform Act 2005. Parliament will have approved the principle that UKSC security officers can seize items that may jeopardise the maintenance of order in the UKSC or put the safety of any person in the UKSC at risk. Given the delegated power relates to the return of items and that an identical power is currently provided for under the negative resolution procedure, it is considered that the negative resolution procedure provides the appropriate level of Parliamentary scrutiny.

**New paragraph 76E of Schedule 12 to the Bill – Power to make an order to amend the list of relevant functions of a Head of Division which may be exercised by another judge due to incapacity or a vacancy in one of the offices of Head of Division.**

*Power conferred on:* Lord Chancellor

*Power exercisable by:* Order made by statutory instrument

*Parliamentary procedure:* Affirmative resolution

7. Amended clause 18 and new Part 4A of Schedule 12 to the Bill provide that where a Head of Division is incapacitated or the office is vacant, the Lord Chief Justice may, with the agreement of the Lord Chancellor, appoint a judge of the Senior Courts to exercise such relevant functions of the Head of Division as the Lord Chief Justice and Lord Chancellor consider appropriate.

8. The Heads of Division are the Master of the Rolls, the President of the Queen’s Bench Division, the President of the Family Division and the Chancellor of the High Court.

9. New paragraph 76D of Schedule 12 defines “relevant functions” by reference to a list of functions established by different legislation.

10. New paragraph 76E provides that the Lord Chancellor may by order amend that list of relevant functions either to add, remove or vary an entry. It would be cumbersome to have to amend this list by primary legislation should it become necessary to increase the number of functions which need to be capable of being delegated by the Lord Chief Justice for the purposes of the administration of justice should a Head of Division become incapacitated or the office become vacant. Alternatively it may be decided that some functions should no longer be capable of being delegated. Such an order-making power therefore affords some flexibility to respond quickly should the need arise. However, it will be subject to the affirmative resolution procedure which the Government considers appropriate given the importance of the statutory

functions conferred on Heads of Division and the that fact that any such order would be amending primary legislation (namely paragraph 76D of Schedule 12).

**Ministry of Justice**  
**27 November 2012**